APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-362

INTERCOUNTY CONSTRUCTION CORP., and
HARTFORD ACCIDENT & INDEMNITY COMPANY,
Petitioners,

v.

NOAH C.A. WALTER, Deputy Commissioner,
U.S. Department of Labor
Bureau of Employees Compensation

and

MARY JONES,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI
FILED SEPTEMBER 30, 1974
CERTIORARI GRANTED JANUARY 20, 1975

THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

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FILED SEPTEMBER 30, 1974
CERTIORARI GRANTED JANUARY 20, 1975**

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

May 24, 1971 – Deputy Commissioner Walter's First Compensation Order Rejecting Claim.

February 8, 1972 – Deputy Commissioner Walter's Second Compensation Order Awarding Permanent and Total Disability.

February 17, 1972 – Employer and Carrier's Complaint to Enjoin Award.

February 25, 1972 – Answer of Deputy Commissioner Walter.

October 11, 1972 – Employer and Carrier's Motion for Summary Judgment.

November 20, 1972 – Deputy Commissioner's Motion for Summary Judgment.

February 16, 1973 – Order of District Court granting Employer and Carr's Motion for Summary Judgment.

June 21, 1973 – Order of Court of Appeals Permitting Intervention of Mary Jones.

July 3, 1974 – Opinion of Court of Appeals.

July 3, 1974 – Judgment of Court of Appeals.

DISTRICT OF COLUMBIA WORKMEN'S C[illegible] ON ACT

OFFICE OF DEPUTY COMMISSIONER
WASHINGTON, D.C.

D.C. [illegible]

Case No. [illegible]
Insurance Carrier's No. [illegible]

EMPLOYER'S CLAIM FOR COMPENSATION

(To be filed in duplicate with the Deputy Commissioner in accordance with sections 13 and 19 of the Act)

INJURED PERSON

1. Name of employee Charles Ernest Jones Employee's Check No.
2. Address: Street and No. 7010 Craig Street City or town Fort Pleasant
3. Sex Male Age 31 Married, single, widowed, or divorced
4. Are you a U. S. citizen? (Yes or No) yes Social Security No. 213-26-1829
5. State regular occupation piledriver
6. What were you doing when injured? working as a piledriver
7. (a) Wages or average earnings per day, $31.00 (Include overtime, board, rent, and other allowances.) (b) Per week, $182.00 (c) Were you employed elsewhere during week in which you were injured? no (d) If so, state where and when

EMPLOYER

8. Employer Inter-County Construction Corporation
9. Office address: Street and No. 4727 Baltimore Ave. City or town Hyattsville
10. Nature of business heavy construction

11. Place where accident occurred 2nd and N Streets, S. E., Washington, D. C.
(Give complete address or location)

THE INJURY OR DISEASE

12. Name of foreman
13. Date of accident or first illness, the 19th day of July, 19 60, at 3:10 o'clock P. M.
14. How did accident happen or how was occupational disease caused? Employee was standing on a metal slab to guide a piece of steel into place; due to the slack in the cable securing the slab he was caught off by the piece of steel
15. State fully nature of injury or condition. (Use other side if more space is required.)
He was knocked to the ground, body fell, head and fractured his skull in three places and sustained other injuries to his body.

EXTENT OF DISABILITY

16. On what date did you stop work as result of injury or disease? July 19, 19 60
17. Were you paid full wages for the day on which you stopped work? (Yes or No) yes
18. Have you returned to work? (Yes or No) no If "yes," on what date?
, 19
19. Does injury or disease keep you from work? (Yes or No) yes
20. Have you done any work in period of disability? (Yes or No) no
21. Have you received any wages since becoming disabled? no
If so, from and to what date?
22. Has injury or disease resulted in amputation or other permanent disability? yes
If so, describe same, if not apparent, and state extent as to arrival
23. Did you report your employer to provide medical attendance? yes Has he done so?
24. What is your claim for compensation for permanent disability

NOTICE

25. Have you given your employer notice of injury? (Yes or No) yes When?
July 19, 1960.
26. If such notice was given, to whom? Superintendent of Inter-County Construction Corp
27. What was the cause of failure?

I hereby make claim for compensation for the injury [illegible] under the Longshoremen's and Harbor Workers' Compensation Act, as amended by the [illegible]

Signed by [illegible]
Claimant.

Dated August 12, 1960. [illegible]

BEST COPY AVAILABLE

OFFICE OF DEPUTY COMMISSIONER
WASHINGTON, D. C.

Case No. .....
Insurance Carrier's No. .....

D.C. Exhibit No 6

ANSWER OF EMPLOYER OR INSURANCE CARRIER TO THE LONGSHOREMEN'S CLAIM FOR COMPENSATION

..., Claimant
vs.
..., Employer
..., Insurance Carrier

The employer or insurance carrier above named for answer to the claim respectfully shows:

1. It is {denied / admitted} that claimant sustained an injury on or about the date set forth in the claim.

2. It is {admitted / denied} that both the employer and employee were subject to the District of Columbia Workmen's Compensation Act at the time of the alleged injury.

3. It is {admitted / denied} that the relationship of employer and employee existed at the time of the injury.

4. It is {admitted / denied} that at the time of the alleged injury the employee was performing service growing out of and incidental to his employment.

5. It is {admitted / denied} that due notice of injury was given employer.

6. It is {admitted / denied} that claimant was permanently disabled to the extent stated in claim.

7. It is {admitted / denied} that claimant was temporarily disabled for the period stated in claim.

8. It is {admitted / denied} that the rate of wages as set forth in claim is correct.

9. .....

Signed .....

Note—... a copy of it is served ... claimant either personally or by mailing to the address given in the claim.

AUG 25 1960

D. C. C. ...

...ATION ACT

OFFICE OF DEPUTY COMMISSIONER
WASHINGTON, D. C.

Case No. ...
Insurance Carrier's No. ...

...REPORT TO DEPUTY COMMISSIONER OF ACCIDENT OR OCCUPATIONAL DISEASE

To be submitted in triplicate.

EASTERN CASUALTY AND INDEMNITY COMPANY, 1629 Vermont Avenue N. W., WASHINGTON 5, D. C.

D.C. Exhibit No 7

EMPLOYER

1. Employer's name Intercounty Construction Corporation
2. Office address P.O. Box 329 - Fayetteville, North Carolina
3. Nature of business Construction
4. ... (Whether agent, subcontractor, owner, lessee or hired contractor or employee of) ... 5. Where is carrier notified?

INJURED PERSON

6. Full name of injured person Charlie D. Jones — His check No. ...
7. Address (Street and No.) 7129 Dregg Ave., Glen Burnie, Maryland.
8. Sex Male Age ... Single or married? ... If not, what became of ...?
9. Injured person's regular occupation Pile Driverman
10. Was he injured in regular occupation? Yes If not, occupation when injured ...
11. Wages or average earnings per day, $ ... per week, $ $3.275 per hr. (Include overtime, bonuses, etc.)
12. Working days per week 5 (8 hr. day) Any other advantage? ...
13. Length of service in occupation one day Were full wages paid for day of injury? Yes

THE INJURY

14. Place where injury occurred D.C. Main Pumping Station Yard at Canal & 40th Street, S.E. Washington, D.C.
15. Name of foreman or supervisor Herbert Conrad
16. Date of accident or first illness July 19, 1960 (Month, day, year) Last day worked ... (Month, day, year)
17. When did you or your foreman first have knowledge of injury? Immediately
18. Describe in full how alleged accident occurred, or how employee was exposed to alleged hazard: The employee was on top of the steel sheet piling (15' up) getting ready to set another piece of sheet piling when he fell to the ground striking his head on a pile.
19. Machine, tool, or thing in connection with which accident or disease occurred ... (If machine, state make)
20. Nature of injury or occupational disease Fractured Skull etc. - Very Critical Condition. (State exactly the part of the person affected and the character of injury or disease)

NATURE AND EXTENT OF INJURY

21. Was accident reported to employer? ...
22. ... (Name and address of physician) ...
23. Did employee lose time as result of injury? ... If "yes", on what date? ...
24. Has employee returned to work? ... If "yes", on what date? AUG ...
25. Did employee die as result of injury? ... When? D. C. C. ...
26. ...
27. ...

Form Name: ... Date: July 20, 1960

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DISTRICT OF COLUMBIA WORKMEN'S COMPENSATION ACT

OFFICE OF THE DEPUTY COMMISSIONER
WASHINGTON, D. C.

Case No. ~~Penn. 25144-47~~
Insurance Carrier's No. 26

NOTICE TO THE DEPUTY COMMISSIONER THAT THE PAYMENT OF COMPENSATION HAS BEGUN WITHOUT AWAITING AWARD

(To be submitted in duplicate to Deputy Commissioner)

DC cash no 7

1. Name of employer Inter-County Construction Corp.
2. Office address P.O. Box 329 - Hyattsville, Maryland.
3. Name of injured person Charles E. Jones
4. Present address: Street and No. 7010 Gregg St., City or town Seat Pleasant, Maryland.
5. Date of accident or first illness 7/19/60, 19 Date disability began 7/19/60, 19 — no paid for this day
6. Compensation is to be paid to Charles E. Jones (Name of injured or deceased)
7. Average daily wage $ ..... multiplied by ..... = $ ..... divided by 52 = average weekly wage $55.00 multiplied by 2/3 = compensation rate $ 36.00 (Maximum compensation limit $25 per week)
8. Compensation shall be payable from the 20th day of July, 19 60 until notice is given the Deputy Commissioner that payment has been stopped or suspended.
9. Date of first payment 8/22/60, 19

Name of Insurance Carrier Hartford Accident & Indemnity Company

Signed by Walter C. Richard

Dated 8/22/60, 19 Official title Milton C. Forcher, Adj.

Copy of this form as completed to be given to person to whom compensation is paid at time of first payment.

RECEIVED
AUG 23 1960
D. C. C. A.

Form LC-262 Printed in U. S. A.

DISTRICT OF COLUMBIA WORKMEN'S COMPENSATION ACT

OFFICE OF DEPUTY COMMISSIONER
WASHINGTON, D. C.

Case No. 25144-49
Insurance Carrier's No. 26

NOTICE TO THE DEPUTY COMMISSIONER THAT CLAIM WILL BE CONTROVERTED

(To be submitted in duplicate to Deputy Commissioner)

NOTE.—This form must be completed and filed with the Deputy Commissioner on or before the 14th day after the employer has knowledge of the alleged injury or death, in all cases where the right of the injured to compensation is controverted.

CA No 47

1. Name of employer Intercounty Construction Company
2. Office address: 3414 Baltimore Avenue, Hyattsville, Maryland
3. Name of injured person Charles E. Jones
4. Present address: Street and No. 2546-1st. Ave. So. City or town St. Petersburg, Florida
5. Date of alleged accident or first illness July 19, 1960, 19 , M.
6. Nature of alleged accident or occupational disease On top of steel piling getting ready to set another piece of sheet piling when he fell to the ground rupturing his head on a valve.
When was notice of injury received from employer? August 13, 1960, 19
7. This case will be controverted for the following reasons:
   (a) For weekly wage? I
   (b) For rate of compensation?
   (c) For period of disability?
   (d) If controverted for any other reason, full statement thereof is required below.
   (1) Wages.
   (2) Extent of Disability.
   (3) Unauthorized medical care in St. Petersburg, Florida.
9. Do you believe the controversy can be settled by conference without the necessity for sworn testimony? (Yes or No)

Name of Insurance Carrier Hartford Accident & Indemnity Company

Signed by Edward M. Brady

Dated Jmuary 6, 1965 Official title Richard C. Francis

RECEIVED
JAN 7 1965
D. C. C. A.

Form LC-262 Printed in U. S. A.

BEST COPY AVAILABLE

BUREAU OF EMPLOYEES' COMPENSATION

FEDERAL EMPLOYEES COMPENSATION PROGRAM

COMPENSATION PAYMENT STOPPED OR SUSPENDED

1. B.E.C. CASE NUMBER 15144-19 Tr.27
2. CARRIER'S NUMBER 26

NAME AND ADDRESS OF EMPLOYEE (Number and street, city, State, and ZIP code) D.C. No 16.

Charles E.Jones
2546-1st. Avenue, South
St.Petersburg, Florida

NOTE
Retain only copies 2 and 3.

Send copies 2, 4, 5, and 6 to the Deputy Commissioner who will forward employee's copy to him.

4. NAME OF EMPLOYER: Intercounty Construction Company
5. ADDRESS OF EMPLOYER: P.O. Box 329, Hyattsville, Maryland
6. DATE OF INJURY: 7/19/60
7. DATE EMPLOYEE FIRST DID NOT WORK BECAUSE OF INJURY: 7/20/60
8. DATE PHYSICIAN FOUND EMPLOYEE ABLE TO RETURN TO WORK
9. DATE EMPLOYEE RETURNED TO WORK
10. AVERAGE WEEKLY WAGE $ 82.00 (Maximum compensation rate—$70.00 per week) MULTIPLIED BY 2/3 = COMPENSATION RATE $ 54.00
11. GIVE REASONS WHY PAYMENTS HAVE BEEN STOPPED OR SUSPENDED: Compensation cont. Claimant is ready for permanent rating.
12. DATE OF THIS NOTICE: April 27,1965.
13. DATE LAST PAYMENT MADE: April 20, 1965.

LIST ALL DISABILITY PAYMENTS

14. TYPE OF DISABILITY	15. FROM (Month, day, year)	16. TO (Month, day, year)	17. AMOUNT PAID PER WEEK	18. NUMBER OF WEEKS PAID	19. TOTAL
TEMPORARY TOTAL	7/20/60	4/25/65	$54.00	253 wks.	$13,662.00
TEMPORARY PARTIAL					
TEMPORARY TOTAL*					
PERMANENT PARTIAL (Schedule)					
PERMANENT TOTAL					
PERMANENT PARTIAL (Schedule—loss or loss of use)	FINGER	PART OF BODY			

*REPORT ON THIS LINE PAYMENT FOR DISABILITY LASTING FOR LESS THAN ONE FULL WEEK OR LESS THAN ONE FULL DAY. TOTAL ——→ $13,662.00

LIST ALL PAYMENTS MADE ON ACCOUNT OF DEATH

a. NAMES OF BENEFICIARIES	b. AMOUNT	c. OTHER EXPENSES	d. AMOUNT
		FUNERAL EXPENSE	
		NO. DEPENDENTS—PAID TO DATE $	
		TOTAL (Sum of b and d) ——→	

20. NAME OF INSURANCE CARRIER: HARTFORD ACCIDENT AND INDEMNITY COMPANY

21. SIGNATURE OF PERSON MAKING THIS REPORT: Richard H. Smith
22. TITLE OF PERSON WHOSE SIGNATURE APPEARS IN ITEM 21: Claims Supervisor

CA-7
1—DEPUTY COMMISSIONER

BUREAU OF EMPLOYEES' COMPENSATION

FEDERAL EMPLOYEES COMPENSATION PROGRAM

Tr.27

PAYMENT OF COMPENSATION WITHOUT AWARD

1. B.E.C. CASE NUMBER 15144-19
2. CARRIER'S NUMBER 26

NOTE. This notice is to be filed with the Deputy Commissioner when the first payment is made. Copy should be sent to the person to whom compensation was paid.

3. NAME OF INJURED PERSON (First, middle initial, last): Charles E.Jones (2) D.C. No 17.
4. ADDRESS OF INJURED PERSON (Number and street, city and state): 2546-1st. Avenue, South, St. Petersburg, Florida
5. DATE OF ACCIDENT OR FIRST DISABILITY (Month, day, year): July 19, 1960
6. DATE DISABILITY BEGAN (Month, day, year): July 20, 1960
7. NAME OF INJURED, OR DEPENDENTS OF INJURED TO WHOM COMPENSATION WILL BE PAID: Charles E.Jones
8. AVERAGE WEEKLY WAGE $ 81.00 MULTIPLIED BY % = COMPENSATION RATE $ 27.00 50%

(Maximum compensation limit—$70.00 per week)

9. COMPENSATION WILL BE PAID FROM (Month, day, year): April 21, 1965.
10. DATE OF FIRST PAYMENT (Month, day, year): May 4, 1965.
11. NAME OF EMPLOYER: Intercounty Construction Company
12. ADDRESS OF EMPLOYER (Number and street, city and state): P.O. Box 329, Hyattsville, Maryland
13. NAME OF INSURANCE CARRIER: HARTFORD ACCIDENT AND INDEMNITY COMPANY
14. AUTHORIZED SIGNATURE: Richard H. Smith
15. TITLE OF PERSON WHOSE SIGNATURE APPEARS IN ITEM 14: Claims Supervisor
16. DATE SIGNED: April 27, 1965.

U.S. DEPARTMENT OF LABOR
Bureau of Employees Compensation
DISTRICT OF COLUMBIA WORKMEN'S COMPENSATION ACT
VANGUARD BUILDING
1111 TWENTIETH STREET NW.
Washington, D.C. 20211

June 1, 1965

REFER TO FILE NO.
15144-49
26

Charles E. Jones
2546 - 1st Ave. S.
St. Petersburg, Florida

Re: Charles E. Jones
Vs: Intercounty Construction Co.
Date of Inquiry: 7/19/60

Dear Mr. Jones:

The Hartford Accident and Indemnity Co. filed form BEC-208 (the green form referred to in your letter of May 21, 1965) as notification that your payments of $54 a week for temporary total disability were being discontinued as of April 21, 1965. The insurance carrier has taken this position because it feels that you are no longer totally disabled as a result of your injury. A representative of the insurance carrier informed me by telephone on May 4, 1965 that the carrier has substantial information upon which to rely to defend its position. It is the carrier's contention that you now have a 50 percent temporary partial disability resulting from the injury, which entitles you to compensation payments of $27 per week.

On January 21, 1965 we sent you a copy of form BEC-307, "Notice to the Deputy Commissioner that Claim Will be Controverted", which was filed by the insurance carrier.

Please note that item (d) (3) states unauthorized medical care in St. Petersburg, Florida. The carrier has denied liabiling for the expense of the medical care you are receiving in Florida because it did not authorize such treatment. Also, it appears that the physician who is treating you has never filed a medical report with the carrier.

You may cash the checks which you received since your payments were reduced, without prejudicing your claim in any way. This will not bar you from pursuing a claim for further compensation.

If you intend to contest the carrier's position, it is suggested that you do so through your attorney so that any claim you are making may be clearly presented. You should also reply to our letter of May 20, 1965 in which we asked you to clarify who your authorized representative is.

Very truly yours,

/s/ D. FREDERICK
D. Frederick
Claims Examiner

cc: carrier
Attorney Lyman
Attorney Miller

- - - - - - - - - - - - - - -

COMPENSATION PAYMENT STOPPED OR SUSPENDED

1. B. C. CASE NUMBER
2. CARRIER'S NUMBER

D.C. exhibit #2

3. NAME AND ADDRESS OF EMPLOYEE

Charles E. Jones
2517 - 3rd. Avenue,N.
St.Petersburg, Florida 33713

NOTE
Retain only copies 2 and 3.

Send copies 1, 4, 5, and 6 to the Deputy Commissioner who will forward employee's copies to him.

4. NAME OF EMPLOYER: Intercounty Construction Company
5. ADDRESS OF EMPLOYER: P.O. Box 339, Hyattsville, Maryland
6. DATE OF INJURY: 7/19/60
7. DATE EMPLOYEE FIRST LOST WORK BECAUSE OF INJURY: July 20, 1960
8. DATE PHYSICIAN FOUND EMPLOYEE ABLE TO RETURN TO WORK
9. DATE EMPLOYEE RETURNED TO WORK
10. AVERAGE WEEKLY WAGES $1.00 (Maximum or minimum rate $70.00 per week) MULTIPLIED BY 2/3 or COMPENSATION RATE $27.00 (50%)
11. GIVE REASONS WHY PAYMENTS HAVE BEEN STOPPED OR SUSPENDED: Carrier has paid $17,280.00 maximum payable under the D.C.Act For Temp. Total and Temp Part.
12. DATE OF THIS NOTICE: January 23, 1963
13. DATE LAST PAYMENT: January 23, 1963

LIST ALL DISABILITY PAYMENTS

TYPE OF DISABILITY	FROM (Mo., day, yr.)	TO (Month, day, year)	AMOUNT PAID PER WEEK	NUMBER OF WEEKS PAID	TOTAL
TEMPORARY TOTAL	7/20/60	1/22/63	$27.00	2[illegible]	$32[illegible]
TEMPORARY PARTIAL	1/23/63	1/23/63	$27.00	1.4[illegible]	$3[illegible]
TEMPORARY PARTIAL*					
PERMANENT PARTIAL (Specify loss)					
PERMANENT TOTAL					
PERMANENT PARTIAL (Schedule loss, facial disfigurement)	PERCENT	PART OF BODY			
				TOTAL →	$[illegible]

*REPORT ON THIS LINE PAYMENTS FOR A PERIOD OF MORE THAN 6 MONTHS IN ADDITION TO PAYMENTS MADE

LIST ALL PAYMENTS MADE ON ACCOUNT OF DEATH

a. NAMES OF DEPENDENTS	b. AMOUNT	c. OTHER EXPENSES	d. AMOUNT
		FUNERAL EXPENSE	
		MEDICAL EXPENSES PAID TO PERSONS OTHER THAN U.S.	
		TOTAL	

14. NAME OF INSURANCE CARRIER OR SELF-INSURED EMPLOYER
HARTFORD ACCIDENT AND INDEMNITY COMPANY

15. SIGNATURE OF PERSON MAKING REPORT
16. TITLE OF PERSON MAKING REPORT
Compensation Division

DEPUTY COMMISSIONER

BEST COPY AVAILABLE

Law Offices of
JEFFERSON deR. CAPPS
3446 FIFTH AVENUE NORTH
ST. PETERSBURG, FLORIDA 33713

TELEPHONE 813/894/4231

Mr. C.M. Moore
Claims Examiner
U.S. Bureau Employees Compensation
P.O. Box 35049
Jacksonville, FL 32202

Dear Mr. Moore:

Re: CHARLES E. JONES
Date of Injury: 19 July 1960
Intercounty Construction Corp.
File NR. DCCA - 15144-49
Carrier's File Nr. 26 (Hartford Ins. Group)

Jefferson de R. Capps, Esq., as counsel for the claimant, CHARLES E. JONES, and KURT P. HAMPP, Esq., counsel for the carrier, HARTFORD INSURANCE GROUP, do hereby stipulate the following as to the above referenced claim:

1. The claimant, CHARLES E. JONES, claims 100% permanent total disability and inability to perform any gainful activity since 19 July 1960.

2. The deposition of ALFRED D. KOENIG, M.D., psychiatrist and neurologist, of St. Petersburg, Florida, may be taken by the claimant and the same is jointly stipulated into evidence for the formal hearing in this cause in lieu of the live testimony of this physician.

3. Currently, the claimant, CHARLES E. JONES, is receiving Veterans Administration and Social Security benefits for 100% disability which benefits are the claimant's only source of income.

4. The claimant, CHARLES E. JONES, duly filed his claim for permanent disability in the above cause with the Bureau on 18 August 1960.

5. The claimant, CHARLES E. JONES, received a copy of form entitled, "Important Notice to Employee", dated 27 April 1965 by carrier, setting forth that claimant had been paid temporary total compensation from 20 July 1960 to 28 April 1965 at $54.00 per week for a total amount paid of $13,392.00, and that claimant was ready for permanent rating.

6. The claimant, CHARLES E. JONES, received a copy of form entitled, "Payment of Compensation Without Award", signed on 27 April 1965 by carrier, setting forth that claimant's weekly wage rate of $81.00 per week would for disability compensation purposes be $27.00 per week (50% of 2/3 of $81.00), said compensation to be paid from 21 April 1965 and commence on 4 May 1965.

7. The employer, through the carrier, filed an Important Notice to Employee, dated 23 January 1968, that as "Carrier has paid $17,280.00 maximum payable under the D.C. Act or (sic: "for") Temp. Total and Temp. Partial", last payment being made on 23 January 1968, payments were stopped or suspended by carrier. Further, that claimant received a copy of said notice.

8. All reports by all doctors as to examination or treatment of claimant shall be stipulated into evidence for the formal hearing in this cause, but carrier or claimant reserve the right to object to the conclusions that may be set forth therein.

9. Claimant acknowledges that the carrier objects to the affidavit of FREDERICK T. SHUE, dated 5 May 1970 filed with the Bureau by letter from claimant's attorney dated 9 July 1970.

10. Letter from Bureau of Disability Insurance, Social Security Administration, dated 2 November 1967, setting forth claimant's record of earnings credited to his social security account for years 1955 through 1960, the same being filed with the Bureau by letter from claimant's attorney, dated 3 April 1970, shall be stipulated into evidence for the formal hearing in this cause.

11. Claimant's attorney, Jefferson de R. Capps, first informed the Bureau that he represented claimant by his letter dated 2 December 1969.

12. Claimant's attorney, Jefferson de R. Capps, first requested hearing upon claimant's claim for compensation for permanent disability by letter to the Bureau dated 11 February 1970.

13. Claimant's attorney agreed to provide carrier's attorney of claimant's rehabilitation efforts since injury on 19 July 1960.

Dated: 15th September 1970

JEFFERSON de R. CAPPS /s/	/s/ KURT PRESTON HAMPP
Jefferson de R. Capps	Kurt Preston Hampp
Attorney for Claimant,	Attorney for Carrier,
CHARLES E. JONES	HARTFORD INSURANCE GROUP

UNITED STATES DEPARTMENT OF LABOR
BUREAU OF EMPLOYEES' COMPENSATION
DISTRICT OF COLUMBIA COMPENSATION DISTRICT

In the matter of the claim for compensation under the District of Columbia Workmen's Compensation Act	COMPENSATION ORDER REJECTION OF CLAIM FOR ADDITIONAL COMPENSATION AWARD OF MEDICAL EXPENSES
CHARLES E. JONES, Claimant	CASE NO. 15144-49
vs.	
INTERCOUNTY CONSTRUCTION CORPORATION, Employer	
HARTFORD ACCIDENT AND INDEMNITY COMPANY, Insurance Carrier	

Such investigation in respect to the above-entitled claim having been made as is considered necessary, and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following:

FINDINGS OF FACT

1. That on July 19, 1960, the claimant above named was in the employ of the employer above named, whose address is 4744 Baltimore Avenue, Hyattsville, Maryland; that the employer was subject to the provisions of an Act of Congress approved May 17, 1928, entitled, "An Act to

provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia and for other purposes"; that the liability of the employer for compensation under the said Act was insured by Hartford Accident and Indemnity Company;

2. That on the said day the claimant, while performing services for the employer as a pile driver at a jobsite in the District of Columbia, fell a distance of about 20 feet to the ground and landed on his head and was rendered unconscious; that as a consequence of which he suffered an injury diagnosed as fracture of the right zygoma, right infra orbital ridge, nose and left ulna;

3. That the claimant had previously suffered several non-work related injuries with no findings of permanent disability and after a short period of disability he was able to resume and perform the duties of his regular employment until the injury of July 19, 1960; that subsequent to the injury of July 19, 1960, the substantial medical evidence establishes that the claimant suffered a severe organic personality alteration, secondary to brain damage which superimposed upon his preexisting socipathic personality caused a greater disability to the extent that rehabilitation for gainful employment in the open labor market was not possible; that such disability is permanent in nature, and as a consequence he requires continuous medical treatment and frequent hospitalization; that the injury arose out of and in the course of the employment;

4. That the employer and insurance carrier furnished to the claimant partial medical and hospital care in accordance with Section 7(a) of the Act; that the claimant obtained such additional medical and hospital care as required by the injury; that on October 7, 1963 and June 22, 1965, the

employer and insurance carrier received medical information relating said treatment to the injury of July 19, 1960;

5. That written notice of the injury was not given to the employer within thirty days, but the employer had knowledge of the injury and was not prejudiced by the lack of such written notice;

6. That the claimant filed a claim for payment of compensation on August 12, 1960;

7. That the average weekly wages of the claimant at the time of injury were $81.00;

8. That the employer and insurance carrier voluntarily paid compensation to the claimant from July 20, 1960 to April 20, 1965, 248 weeks, inclusive, at the rate of $54 per week for temporary total disability, amounting to $13, 392; and from April 21, 1965 to January 23, 1968, inclusive, 144 weeks at the rate of $27 per week, based upon 50 percent permanent partial disability, amounting to $3, 888, or a total of $17,280, the statutory limit for temporary total disability and permanent partial disability;

9. That on June 8, 1966, the claimant was declared incompetent by County Judge Ray E. Ulmer of Pinellas County, the State of Florida, and his wife was appointed his guardian;

10. That on February 11, 1970, the claimant's attorney filed claim for payment of additional compensation based upon permanent total disability; that on December 21, 1970, at a hearing first held to consider claimant's claim, the employer and insurance carrier contended that said claim was barred since the claim was not filed within one (1) year after the date of the last payment of compensation, made

on January 23, 1968, in accordance with Section 13(a) of the District of Columbia Workmen's Compensation Act.

Upon the foregoing findings of fact, it is ordered by the Deputy Commissioner that the employer and insurance carrier shall pay reasonable cost of all medical and hospital care required by the claimant as a result of the injury of July 19, 1970.

Upon the foregoing findings of fact, it is further ordered by the Deputy Commissioner that the claim for additional payment of compensation for permanent total disability be and the same hereby is REJECTED for the following reason:

That the claim for payment of additional compensation was not filed within a year of January 23, 1968, the date on which the last installment of compensation was paid to the claimant in accordance with Section 13(a) of the District of Columbia Workmen's Compensation Act.

Given under my hand and filed at Washington, D.C. this twenty-fourth day of May, 1971

/s/ NOAH C.A. WALTER
Noah C.A. Walter
Deputy Commissioner
District of Columbia Compensation District

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PROOF OF SERVICE

I hereby certify that a copy of the foregoing compensation order was sent by certified mail to the claimant's guardian, the employer, the insurance carrier (local office and state office), attorney for the claimant, and the attorneys for the respondents at the last known address of each as follows:

NAME	ADDRESS
Mrs. Mary A. Jones	2517 Third Avenue North St. Petersburg, Florida 33713
Intercounty Construction Corporation	Post Office Box 329 Hyattsville, Maryland 21281
Hartford Accident and Indemnity Company	Post Office Box 12691 St. Petersburg, Florida 33733
Hartford Accident and Indemnity Company	1101 - 17th Street, N.W. Washington, D.C. 20036
Jefferson de R. Capps, Esq. Esquire	3446 Fifth Avenue North St. Petersburg, Florida 33713
Kurt Preston Hampp, Esquire Roney, Ulmer, Woodworth & Jacobs, Attorneys at Law	445 - 31st Street North St. Petersburg, Florida 33733

/s/ NOAH C.A. WALTER
Noah C.A. Walter
Deputy Commissioner

Mailed: May 24, 1971

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF WORKMEN'S COMPENSATION PROGRAMS
DISTRICT OF COLUMBIA COMPENSATION DISTRICT

In the matter of the claim for compensation under the District of Columbia Workmen's Compensation Act

CHARLES E. JONES
Claimant

vs.

INTERCOUNTY CONSTRUCTION CORPORATION
Employer

HARTFORD ACCIDENT AND INDEMNITY COMPANY
Insurance Carrier

COMPENSATION ORDER AWARD OF COMPENSATION
CASE NO. 15144-49

On May 24, 1971, a compensation order was filed in the above-entitled case, rejecting claim for payment of compensation for permanent total disability as not having been filed within the statutory period under the provisions of the District of Columbia Workmen's Compensation Act. The said compensation order is made a part hereof by reference.

The claimant thereafter instituted proceedings for judicial review before the United States District Court for the District of Columbia, Civil Action No. 1172-71. On December 2, 1971, the District Court remanded the case to the Deputy Commissioner for further consideration by him, as may be appropriate.

Acting pursuant to the order of the District Court the Deputy Commissioner has made a further review of the whole record in the case, including the transcripts of testimony of the hearing held December 21, 1970, and he now concludes as follows with respect to the merits of the case and makes the following additional findings of fact which are supplemental to the findings of fact in the compensation order filed by the Deputy Commissioner on May 24, 1971.

FINDINGS OF FACT

That the finding of fact that said claim was not filed within one year after the last payment of compensation made on January 23, 1968, in accordance with Section 13(a) of the District of Columbia Workmen's Compensation Act, and the rejection of claim resulting therefrom, were in error and should be set aside; that said claim filed on August 12, 1960, was in accordance with Section 13(a) of the Act; that from and after the filing of said claim on August 12, 1960, no action to adjudicate said claim was taken; that once a claim has been filed the Act does not provide for payments or settlements finally discharging the liability of the employer on such a claim and the status of the claim once filed remains open and unaffected until a compensation order is filed and issued, as provided under Section 19 of the Act; that on August 26, 1966, the claimant had an informal conference and made application for adjudication for said claim for payment of compensation for permanent total disability; that the claimant's attorney's application for further payment of compensation for permanent total disability made on February 11, 1970, is proper in accordance with Section 13(a) of the Act; that the substantial and creditable evidence sustains that the claimant

continues to suffer a disability as a result of the injury of July 19, 1960; that such disability is permanent in character; that the claimant is entitled to compensation for permanent total disability beginning July 20, 1960 and continuing; that accrued compensation from July 20, 1960 to February 8, 1972, inclusive, 60 weeks at the rate of $54 per week, amounts to $32,562; that the claimant has been paid compensation for temporary total disability and temporary partial disability from July 20, 1960 to January 23, 1968, inclusive, amounting to $17,280; that accrued compensation due and payable to the claimant amounts to $15,282.

Upon the foregoing findings of fact, the Deputy Commissioner makes the following additional

AWARD

That the finding of fact in the compensation order filed on May 24, 1971, that claim was not timely filed, and the rejection of claim resulting therefrom, are hereby set aside, and said claim is hereby declared to have been timely filed in accordance with Section 13(a) of the Act; that the employer, Intercounty Construction Corporation, and the insurance carrier, Hartford Accident and Indemnity Company, shall pay compensation to the claimant as follows: For permanent total disability from July 20, 1960 to February 8, 1972, inclusive, 603 weeks at the rate of $54 per week in the amount of $32,562. The employer and the insurance carrier, having previously paid $17,280 to the claimant as compensation, shall pay forthwith the accrued balance of $15,282, together with interest calculated in accordance with Section 14(b) and (m) of the Act on each past due installment of compensation at the rate of 6 percent per

annum from each original due date until paid, and thereafter shall continue payments of compensation to the claimant for permanent total disability during the continuance of such disability at the rate of $54 per week, payable in biweekly installments, subject to the limitation of the Act or until further order of the Deputy Commissioner.

The employer and the insurance carrier shall also pay the reasonable cost of all medical treatment and hospital care as required by the injury and secured by the claimant since the injury of July 19, 1960, and shall continue to provide and pay the reasonable cost of such medical treatment and care as the nature of the injury and the process of recovery therefrom may require.

A fee for legal services rendered the claimant in connection with this claim is approved in favor of Jefferson de R. Capps, Attorney at Law, 3446 Fifth Avenue North, St. Petersburg, Florida 33713, in the amount of $3,500, such sum to be a lien upon and to be paid out of this award.

Given under my hand and filed at Washington, D.C. this eighth day of February, 1972

/s/ NOAH C.A. WALTER
Noah C.A. Walter
Deputy Commissioner
District of Columbia Compensation District

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INTERCOUNTY CONSTRUCTION CORPORATION, *et al.*, *Plaintiffs,*	:	
v.	:	**Civil Action No. 297-72**
NOAH C.A. WALTER, Deputy Commissioner, *Defendant.*	:	

ORDER

Upon consideration of Plaintiffs' motion for summary judgment, Defendant's opposition thereto, and upon consideration of the entire record herein, it appearing to the Court that Section 22 of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §922, is a bar to the jurisdiction of the Deputy Commissioner to enter the challenged compensation order herein, Strachan Shipping Co. v. Hollis, 460 F.2d 1108 (5th Cir. 1972), it is this 15th day of February, 1973.

ORDERED, that Plaintiffs' motion for summary judgment be and is hereby granted, and it is

FURTHER ORDERED, that Defendant be and is hereby permanently restrained and enjoined from carrying into effect any part of the February 8, 1972 order and award of benefits to claimant Charles E. Jones.

/s/ AUBREY E. ROBINSON, JR.
Judge

Dated: February 15, 1973

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S. App. D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 73-1569

INTERCOUNTY CONSTRUCTION CORPORATION
HARTFORD ACCIDENT & INDEMNITY COMPANY

v.

NOAH C. A. WALTER, DEPUTY COMMISSIONER,
U.S. DEPARTMENT OF LABOR, BUREAU OF
EMPLOYEES COMPENSATION, APPELLANTS

MARY JONES, INTERVENOR

Appeal from the United States District Court
for the District of Columbia

Judgment entered
this date

Decided July 3, 1974

Leavenworth Colby, Attorney, U.S. Department of Labor with whom *George M. Lilly*, Attorney, United States Department of Labor was on the brief, for appellant. *Harold H. Titus, Jr.*, United States Attorney

at the time the record was filed and *Ellen Lee Park*, Assistant United States Attorney also entered appearances for appellant.

John C. Duncan, III, for appellees.

Maurice C. Goodpasture was on the brief for intervenor.

Before: LEVENTHAL and ROBB, *Circuit Judges* and SOLOMON,* *United States Senior District Judge* for the District of Oregon

Opinion for the Court filed by *District Judge* SOLOMON.

SOLOMON, *District Judge*: The issue presented in this appeal is whether an injured workman who filed a timely compensation claim and whose employer paid compensation without awaiting an award is barred by Section 22 of the Longshoremen's and Harborworkers' Act (Act), 33 U.S.C. § 922, from seeking additional compensation because he did not file a second claim within one year after his employer stopped paying compensation.

Charles E. Jones (claimant) was injured on July 19, 1960, while working for Intercounty Construction Corporation (employer) in the District of Columbia. On August 12, 1960, he filed a claim for permanent disability under the District of Columbia Compensation Act, 45 Stat. 600, 36 D.C. Code 36-501, with the deputy commissioner of the Bureau of Employee Compensation of the Department of Labor.[1] The claim was filed within

* Sitting by designation pursuant to 28 U.S.C. § 294(d).

[1] The District of Columbia Compensation Act incorporates by reference the Longshoremen's and Harborworkers' Act, 33 U.S.C. §§ 901 *et seq.*, as amended. The deputy commissioners of the Bureau of Employee Compensation of the Department of Labor administer both acts.

the period permitted by Section 13 of the Act.[2] The employer's insurance carrier, Hartford Accident & Indemnity Company (carrier), filed an answer on August 25, 1960, admitting that claimant was injured in the course of his employment but denying that he was permanently disabled to the extent stated in his claim. The carrier[3] also filed a notice that it had started to pay compensation without awaiting an award by the deputy commissioner, a procedure required by Section 14(a)[4] of the Act when liability is not controverted. The claimant was paid $54.00 per week, the amount payable for total disability.

On January 6, 1965, the carrier filed a notice that it was controverting Jones' claim on the grounds of wages, extent of disability, and unauthorized medical care. On April 27, 1965, the carrier informed the deputy commissioner that it was reducing claimant's compensation to $27.00 per week, the rate for 50 per cent temporary

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[2] Section 13(a) provides:

TIME FOR FILING OF CLAIMS

Sec. 13. (a) The right to compensation for disability under this chapter shall be barred unless a claim therefor is filed within one year after the injury, . . . except that if payment of compensation has been made without an award on account of such injury or death a claim may be filed within one year after the date of the last payment.

[3] The term "carrier" shall include "employer" because in this case the interests of the carrier and the employer are identical.

[4] Section 14(a) provides:

(a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

partial disability.[5] On June 1, 1965, the deputy commissioner notified the claimant that if he wanted to contest the reduction in payments he should see an attorney. On August 26, 1966, a claims examiner held a hearing at which claimant was present. The conference was adjourned without any recommendation on claimant's renewed claim for total disability benefits.

On January 23, 1968, the carrier stopped paying compensation because it had paid claimant $17,280.00, its maximum liability for any condition other than total permanent disability. On February 11, 1970, claimant requested a hearing on his claim for total permanent disability. Hearings were held on December 21, 1970, and January 14, 1971. On May 24, 1971, Deputy Commissioner Walter entered an order rejecting the claim because the request for a hearing was made more than one year after the carrier's final payment. He held that the claim was barred by Section 22 of the Act, 33 U.S.C. § 922.

Claimant filed an action in the district court to challenge the decision. Shortly thereafter, the Bureau of Employee Compensation concluded that the deputy commissioner's decision was incorrect and agreed to a consent decree remanding the case to the deputy commissioner for further proceedings.[6] On February 8, 1972, the deputy commissioner entered an order awarding claimant compensation for permanent total disability.

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[5] The change from total permanent to temporary partial disability limited the carrier's liability. Under the Act the maximum payable for partial disability was $17,280.00. 33 U.S.C. § 914(m) (1960). There is no maximum liability for total permanent disability.

[6] Neither the employer nor the carrier were parties to the district court action and neither consented to the remand.

Both the employer and the carrier brought this action under 33 U.S.C. § 921(b) to enjoin the deputy commissioner from enforcing the order. The district court granted summary judgment against the deputy commissioner. It held that the claim was barred by Section 22 of the Act. The court relied on *Strachan Shipping Co.* v. *Hollis*, 460 F.2d 1108 (5th Cir. 1972) *cert. denied*, 409 U.S. 887 (1972).

The carrier did not request a hearing before the deputy commissioner during the lengthy administrative proceedings, nor did it ask the deputy commissioner to enter a final compensation order. No compensation order was entered prior to Deputy Commissioner Walter's order of May 24, 1971, which was superseded by his order of February 8, 1972.

Deputy Commissioner Walter appealed. Mary Jones, guardian of the incompetent claimant, intervened.

The basic time limitations on the filing of claims are embodied in Section 13 of the Act. which requires filing within a year after injury or after the last payment of compensation, if compensation has been paid without an award. A further time limitation on action by the Deputy Commissioner is contained in Section 22, which provides:

Modification of Awards

> Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in section 919 of this title, and in accordance with such section issue a new compensation order . . . . Such new order shall not affect any compensation previously paid . . . .

The parties, like the Fifth Circuit in *Strachan Shipping*, have focused the issue almost exclusively on Section 22. We will consider the interpretation of Section 22, taking into account its purpose and legislative history. Nevertheless, we think it is important to stress the bearing of Section 13 on that interpretation, and to note that the claim of the injured employee was filed within one year of his injury as prescribed by Section 13. The issue for the court is not merely the meaning of Section 22 taken by itself, but the proper relationship of Sections 13 and 22 as elements of a sensible and coherent pattern of the statute as a whole.

The carrier contends that the order of February 8, 1972, was barred by the "plain language" of Section 22 because claimant did not request additional compensation until more than one year after the carrier stopped making compensation payments. The deputy commissioner contends that the time limitation in Section 22 applies only to the modification of a final order and does not affect his authority to issue an original order for a claim filed within the time permitted by Section 13.

The deputy commissioner's interpretation of Section 22 as applying only to a modification of a compensation order and not as an additional time limitation on the original filing of a claim is supported by the section's statutory title, "Modification of Awards",[7] and by its reference to an order issued under the section as a "new compensation order". These clauses indicate that the section applies to cases in which a compensation order has already been entered. Similarly, the inclusion of "a mis-

[7] An "award" is a payment made under a compensation order. 33 U.S.C. § 919(e) (1972).

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take in a determination of fact by the deputy commissioner" as a ground for modification of an award implies that a prior compensation order has been entered, since findings of fact are required only in compensation orders. *See* 20 C.F.R. §§ 31.12, 31.13 (1972).

Nevertheless, there is language in Section 22 which is directed to a situation in which no prior final order has been entered. The section provides that the deputy commissioner may review a case "at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued . . . ." This passage could mean that Section 22 applies even if no compensation order has been entered, or that it applies regardless of whether an order has been entered as of "the date of the last payment of compensation". The reference to "a change in conditions" as a ground for modification of an award is also ambiguous. It could refer to conditions found by the deputy commissioner to exist in a prior compensation order, or it could mean conditions which existed when payments were made without awaiting an order.

Since the language of Section 22 is ambiguous, we must look to other sources to determine whether Congress intended the time limitation in section 22 to apply to cases in which no final order was made.

Section 22, as enacted in 1927, permitted the deputy commisioner to review an order "at any time during the term of an award and after the compensation order in respect of such award has become final . . . ." Act of Mar. 4, 1927, c. 509, § 22, 44 Stat. 1437. Because of administrative delays and the Act's emphasis on voluntary compliance, carriers often not only paid compensation but also completed making payments before an order was entered. The deputy commissioner was unable to change the amount due the claimant because the "term

of the award" had expired with the last payment by the carrier. United States Employees' Compensation Commission, Seventeenth Annual Report, at 18 (1933); *Mille v. McManigal*, 69 F.2d 644 (2d Cir. 1934); *F. Jarka Co., Inc. v. Monahan*, 29 F.2d 741 (D.Mass. 1928).

In its Seventeenth Annual Report, the United States Employees' Compensation Commission complained that "Section 22 of the Longshoremen's Act provides [the deputy commissioner] with less authority to do justice to the parties than is contained in any provision for a similar purpose in any State compensation law." *supra* at 18. The Commission recommended that Section 22 be amended to read as follows:

> Sec. 22 Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions, the deputy commissioner may at any time review a compensation order . . . [and] issue a new compensation order . . . , but such new order shall not affect any compensation paid or due under authority of the prior order. The power and jurisdiction of the deputy commissioner over each case shall be continuing, with authority, and after a hearing if applied for, to make such modification or change by a new compensation order whenever he may determine the interests of justice require a modification of an order formerly issued. *supra* at 18.

The Commission's reference to a "new order", "the prior order", and "modification of an order formerly issued" indicates that the Commission did not recommend that Section 22 be amended to apply to cases in which no final order had been entered.

In 1934, Congress amended Section 22 "to broaden the grounds on which a deputy commissioner can modify an award and also while strictly limiting the period, extend the time within which such modification may be made." H.R. Rep. No. 1244, 73d Cong., 2d Sess., April 16, 1934, at 4. The amendment was "in line with the

recommendation of the Commission except that it limits to 1 year after the date of the last payment of compensation the time during which such modification may be made." *Id.* The amendment deleted the original time limitation and substituted "at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued." The phrase "whether or not a compensation order has been issued" was intended to make clear that the deputy commissioner has the authority to modify awards, within the prescribed period, even in cases in which the original compensation order was issued after all payments have been made to the claimant. The amendment did not change the purpose of the section, which, according to the House Report, was to allow deputy commissioners to "modify an award".

In 1938, Section 22 was amended to permit the deputy commissioner to make an award in a case in which he had originally rejected the claim. Act of June 25, 1938, c. 685, § 10, 52 Stat. 1167. The House Report said that "[t]he purpose of this amendment is to extend to such cases the same provisions which now apply in connection with other cases *finally acted upon by the deputy commissioner.*" (emphasis supplied) H.R. Rep. 1945, 75th Cong., 3d Sess., March 14, 1938, at 9.

In our view, the legislative history shows that Congress intended Section 22 to apply only to cases in which the deputy commissioner had "finally acted" by issuing or denying a compensation order. The amendment was not intended to impose an additional time barrier to recovery by claimants who filed within the time permitted by Section 13, and were still awaiting an order on the filed application.

The Fifth Circuit came to the opposite conclusion. A divided panel of that court held in *Strachan Shipping Co. v. Hollis, supra*, that Section 22 barred timely filed

claims which were not refiled within one year after the last payment of compensation, even when no compensation order had been entered. The court did not discuss the legislative history and relied on the "plain language of Section 22". The *Strachan* majority said that:

> It would not be equitable, in our opinion, for courts to approve the deputy commissioner's vigorous efforts to secure voluntary compliance with the Act on the part of employers and their insurers while simultaneously approving the deputy commissioner's refusal to terminate compensation cases, by means of formal orders as envisioned in Section 22 of the Act, when voluntary payments are made.
>
> . . . .
>
> It may well be that our decision . . . will make it difficult for injured employees to obtain adequate compensation commensurate with the full extent of their physical disabilities. Should that eventuality occur, it would be for Congress either to lengthen Section 22's limitations period or to provide other means to postpone the running of the statute of limitations. 460 F.2d at 1116

We reject the reasoning of the Fifth Circuit. A carrier at any time can compel the deputy commissioner to hold a hearing on a pending claim and determine its liability within twenty days after the hearing. *See* 33 U.S.C. § 919(c); 5 U.S.C. § 706(1); *cf. Atlantic & Gulf Stevedores, Inc. v. Donovan*, 274 F.2d 794 (5th Cir. 1960). There is no inequity in continuing pending claims when the carrier can compel a prompt determination.

Here the carrier did not ask for either a formal hearing or the entry of a compensation order, even though such an order would have started the one-year period in which modifications are permitted by Section 22.

The *Strachan* majority did not follow a long-standing and rational interpretation of the Act by the agency charged with the administration of the Act. The regulation issued under Section 22, promulgated on May 31,

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1938, interprets Section 22 as affecting only those cases in which a final order was entered; it does not refer to cases in which an order was not issued.[8] We are unwilling to join the Fifth Circiut in setting aside an agency interpretation that has stood for more than 35 years. *See* Ainsworth, J., concurring and dissenting in *Strachan, supra* at 1117; *see also Udall v. Tallman*, 380 U.S. 1, 16 (1965).

A timely filed claim remains pending until a compensation order is entered by the deputy commissioner. *See Lumber Mutual Casualty Ins. Co. of N.Y. v. Locke*, 60 F.2d 35 (2d Cir. 1932); *American Mutual Liability Ins. Co. of Boston v. Lowe*, 85 F.2d 625 (3d Cir. 1936).[9] Appellant argues that a claim is analogous to a complaint filed under the Federal Rules of Civil Procedure, which remains pending until disposed of by an order of court. We think the analogy has merit. It would be anomalous to require an injured workman to refile a claim in order to preserve his right to compensation when a plaintiff in a civil action does not have to refile his complaint in order to preserve his action. We also believe that such a requirement would contradict the statutory command that the deputy commissioner shall not be bound by "technical or formal rules of procedure" in proceedings under the Act. 33 U.S.C. § 923(a).

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[8] The regulation refers only to "application[s] . . . for modification of an award". 20 C.F.R. § 31.16(a) (1972).

[9] Appellees cite *Lowe* for the proposition that the one-year limitation in Section 22 applies regardless of whether a compensation order has been issued. The *Lowe* court said in dicta that a claim would be barred by Section 22, as amended in 1934, "if we assume that the memorandum . . . was a final order within the terms of the statute". The court did not say that the claim would be barred if no final order had been entered.

The Fifth Circuit's holding bars timely filed unadjudicated claims unless claimants file new claims within one year after their carriers stop paying compensation. Carriers may find it to their advantage to stop payments frequently in the hope that claimants not familiar with the agency's regulations would neglect to file another claim.[10]

The Longshoremen's and Harborworkers' Act "must be liberally construed in conformance with its purpose, and in a way which avoids harsh and incongruous results." *Voris v. Eikel*, 346 U.S. 328, 333 (1953); *see B & P Steamboat Co. v. Norton*, 248 U.S. 408 (1932). It would be harsh and incongrous to force a claimant to refile an unadjudicated claim each time his carrier terminated payments to avoid having his right to compensation permanently barred.

We hold that Section 22 applies only to cases in which a final compensation order has been entered or denied. A claimant, in order to preserve his claim, is not required by Section 22 to refile his timely filed but unadjudicated claim after a carrier stops paying compensation.

All parties agree that appellees are liable for claimant's medical expenses.

The judgment of the district court is reversed. The case is remanded for further proceedings consistent with this opinion.

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[10] *See* letter from John E. Stocker, Assistant Director of the Office of Longshoremen's and Harborworkers' Compensation, to Leavenworth Colby, August 6, 1971, appended to the opinion of Ainsworth, J., concurring in part and dissenting in part in *Strachan, supra* at 1117.

In *Strachan* the carrier stopped paying compensation four times and stopped paying medical benefits twice during a fourteen-year period. Although the repeated termination of benefits in *Strachan* may not be typical, it does show that claimants may be forced to refile claims repeatedly if each termination starts the limitations period to run.

United States Court Of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 73-1569

September Term, 19 73

Civil 297-72

Intercounty Contruction Corporation
Hartford Accident & Indemnity Company

v.

Noah C. A. Walter, Deputy Commissioner,
U.S. Department of Labor, Bureau of
Employees Compensation, Appellants

Mary Jones, Intervenor

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 3 1973

HUGH E. KLINE
CLERK

Appeal from the United States District Court for the District of Columbia.

Before: Leventhal and Robb, Circuit Judges and Solomon,* United States Senior District Judge for the District of Oregon

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration thereof It is ordered and adjudged by this Court that the judgment---------- of the District Court appealed from in this cause is hereby reversed and this case is hereby remanded to the District Court in accordance with the opinion of this Court filed herein this date.

Per Curiam
For the Court

Hugh E. Kline
Clerk

Date: July 2, 1974
Opinion for the Court filed by Senior District Judge Solomon
*Sitting by designation pursuant to 28 U.S.C. § 294(d)

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